No. 80-1107

In the Supreme Court of the United States

OCTOBER TERM, 1980

WILLIAM CAULFIELD, ET AL., PETITIONERS

v.

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Office of Civil Rights of the Department of Health, Education, and Welfare had authority to seek voluntary compliance by the school board to eliminate faculty hiring and assignment practices that subjected students to discrimination in violation of Title VI of the Civil Rights Act of 1964.

2. Whether the school board's voluntary compliance with Title VI by assigning faculty to reflect at each school the racial composition of the faculty in the system as a whole violates the Constitution.

3. Whether the school board's collection of racial and ethnic data regarding teachers violates the Constitution.

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The opinion of the court of appeals of September 22, 1980 (Pet. App. 1a-15a) is reported at 632 F. 2d 999. The opinion of the court of appeals of September 5, 1978 (Pet. App. 16a-38a) is reported at 583 F. 2d 605. The opinion and order of the district court of August 27, 1979, are reported at 486 F. Supp. 862.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1980. The petition for a writ of certiorari was filed on December 17, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The subject of this litigation is a Memorandum of Understanding ("Memorandum") signed by the Board of Education of the City of New York ("Board") and the Office of Civil Rights ("OCR") of the Department of Health, Education, and Welfare ("HEW") on September 7, 1977, obligating the Board to change its teacher hiring and assignment practices to remedy discrimination found by OCR in an investigation conducted pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*[1]

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[1] Related litigation stemming from OCR's investigation of the Board's hiring and assignment practices was the subject of this Court's decision in *Board of Education of the City School District of New York* v. *Harris*, 444 U.S. 130 (1979), in which this Court held that discriminatory impact, and not discriminatory intent, is the appropriate standard for determining whether the Board is ineligible for federal funds under the Emergency School Aid Act ("ESAA"), 20 U.S.C. 1601 *et seq.*

The Board subsequently sought ESAA funds for the 1978-1979 school year, and HEW declined to waive its finding of ineligibility because the Board had not eliminated the racially identifiable schools that led to its ineligibility. The Board successfully challenged this interpretation by HEW of the ESAA requirements, *Board of Education of the City School District of the City of New York* v. *Califano*, 464

In a letter dated November 9, 1976, the director of OCR informed the Board that it was in violation of those provisions of Title VI and Title IX prohibiting discrimination on the basis of race, color, national origin, or sex in education programs that receive federal funds (Pet. App. 4a-5a). Specifically OCR objected to the Board's use of racially discriminatory selection and testing procedures for teachers, its assignment of teachers and principals in a pattern that created and reinforced the racial identifiability of the system's schools, and its placement of less qualified and less experienced teachers at schools with high percentages of minority students (*ibid.*).[2] OCR concluded that these practices resulted in discrimination against minority students (Pet. App. 10a, 23a-24a), and, as required by 42 U.S.C. 2000d-1,[3] it sought to bring the Board into compliance with Title VI by voluntary means. Ten months of negotiations

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F.Supp. 1114 (E.D. N.Y. 1979), and the court of appeals affirmed. *Board of Education of the City School District of the City of New York* v. *Harris*, 622 F. 2d 599 (2d Cir. 1979). The United States' petition for certiorari in that case in *Hufstedler* v. *Board of Education of the City School District of the City of New York*, No. 80-624, was denied on January 26, 1981.

On February 21, 1980, in a second suit seeking ESAA funds for the 1977-1978 school year, the district court entered an injunction against distribution of the funds pending HEW's reconsideration of the Board's request for a waiver of ineligibility. *Board of Education of the City School District of the City of New York* v. *Harris*, No. 79 C 3233 (E.D. N.Y. (Feb. 21, 1980)), aff'd, No. 80-6050 (2d Cir. Feb. 4, 1981).

[2] Petitioners did not challenge in the court of appeals, nor do they contest here, any of the district court's findings with respect to Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* Accordingly, our discussion is confined to the facts and issues relating to Title VI.

[3] With respect to the termination of federal funds for violation of its non-discrimination requirement, Title VI provides in pertinent part (42 U.S.C. 2000d-1): "[N]o such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means."

followed, and on September 7, 1977, the Board and OCR agreed to the Memorandum of Understanding (Pet. App. 5a).

The Memorandum establishes two objectives for the Board in assigning faculty: (1) by September 1979 the teacher corps of each of the 32 districts in the system was to reflect, within a range of 5%, the racial-ethnic composition of the system's teacher corps are a whole; and (2) by September 1980, the faculty at each school was to reflect this same ratio, within a range of 5% (Pet. App. 5a-6a n.5). The Board could justify a failure to meet these goals by showing that the genuine requirements of a valid educational program prevented it from achieving the goal (Pet. App. 6a n.5). In order to implement these provisions, the Memorandum requires the Board to undertake various affirmative measures, including: (1) validation as soon as practicable of all tests used in determining teacher qualifications; (2) merger of old and new teacher eligibility lists without regard to dates of examinations; (3) abolition of rank ordering of persons who passed examinations; (4) implementation of other appropriate affirmative action mechanisms; (5) support for legislation to accomplish these objectives; and (6) identification, as soon as practicable, of the relevant qualified labor pool by race, ethnicity, and sex, and thereafter employment of minorities in teaching and supervisory positions within a range representative of the composition of that pool (*id.* at 6a-7a n.5). In fulfilling its commitment under the Memorandum the Board is not required to lay off any teacher currently employed or to hire any unqualified teacher. A good faith effort suffices for compliance where the Board is unable to meet the goals in the Memorandum (*id.* at 7a n.5).

In October 1977, petitioners sued the Board, OCR, and the State's Commissioner of Education in the United States District Court for the Eastern District of New York, seeking

a declaratory judgment and injunction invalidating portions of the Memorandum as violative of the Fifth and Fourteenth Amendments and Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. 2000d, 2000e-2 (Pet. App. 3a).[4] Petitioners sought a preliminary injunction against the collection of racial and ethnic data by the Board, and the district court denied their motion on March 15, 1978. *Caulfield* v. *Board of Education of the City of New York*, 449 F. Supp. 1203, 1207 (E.D. N.Y. 1978). At the same time the district court set aside the Memorandum and remanded the case to OCR, directing it to conduct hearings in which petitioners could participate. *Id.* at 1226-1227. The court of appeals affirmed the denial of injunctive relief against the collection of racial and ethnic data (Pet. App. 22a-25a), and reversed the district court's order remanding the case to OCR (*id.* at 25a-28a), concluding that HEW, in seeking voluntary compliance with Title VI, had no duty to conduct hearings or to afford petitioners any opportunity for participation in compliance proceedings (*id.* at 26a). The court of appeals remanded the case to the district court for a trial on the merits (*id.* at 28a).

Following a lengthy trial the district court dismissed the complaint on August 27, 1979, rejecting all of petitioners' challenges to the Memorandum. First, the court held that HEW had jurisdiction to investigate the Board's practices under 45 C.F.R. 80.3(c)(3) (1979), a Title VI regulation authorizing oversight of a federal fund recipient's employment practices where those practices have a discriminatory

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[4] Petitioners are teachers, principals and members of local school boards allegedly affected by the Memorandum (Pet. App. 3a; *Caulfield* v. *Board of Education of the City of New York*, 449 F. Supp. 1203, 1207 (E.D.N.Y. 1978)). The district court permitted the United Federation of Teachers, the Council of Supervisors and Administrators and others to intervene as plaintiffs, and permitted the Coalition of Concerned Black Educators, Ronald Ross, the Public Education Association, and the American Civil Liberties Union to intervene as defendants (*ibid.*).

impact upon direct beneficiaries of federal funds, in this case, the students themselves (Pet. App. 9a). OCR had found that the Board's discriminatory faculty hiring and assignment practices deprived minority students of equal educational opportunity by reinforcing the racial identifiability of schools and, in some cases, by placing less qualified or experienced teachers in predominantly minority schools (*ibid.*).

On the merits, the district court determined that the issue was whether the Board and OCR had a reasonable basis for believing that the Board's faculty hiring and assignment practices might result in a judgment of liability, and whether the remedial measures adopted in the Memorandum were reasonable in light of "the perceived liability" (Pet. App. 9a).[5] After a lengthy and detailed review of the evidence as to potential liability and the provisions of the Memorandum, the court upheld it as a reasonable remedial measure, the terms of which did not violate any right of any of the petitioners (*ibid.*).

The court of appeals affirmed the district court's dismissal of petitioners' claims (Pet. App. 15a). It upheld OCR's authority under Title VI to investigate employment practices resulting in discrimination against students and to seek voluntary compliance where it finds violations of that statute (Pet. App. 10a-11a). Judge Oakes, the author of the court of appeals' opinion, affirmed the district court's conclusion that the goals set by the Memorandum of Understanding were reasonable in light of the parties' perception

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[5] In taking this approach the district court found it unnecessary to decide whether the Board s practices would have dictated a finding of discrimination in violation of the Constitution or federal statutes, under either an "intent" standard or an "effects" standard. Accordingly, the court of appeals did not address that question.

of the Board's possible liability under Title VI, Title IX, and the Constitution (Pet. App. 11a-12a). Judge Oakes explained, however, that his colleagues on the panel, Judges Mansfield and Meskill, had a different basis for affirming the district court on this point: their belief that petitioners had failed to show that the Memorandum of Understanding invades a cognizable "liberty or privacy interest" (Pet. App. 13a). At most the Memorandum would affect an individual teacher's expectation of being assigned to a particular school within the system and, in the view of Judges Mansfield and Meskill, that expectation is "not * * * a right protected under Title VI, Title IX or the Constitution" (Pet. App. 14a).[6]

ARGUMENT

The district court and the court of appeals unanimously upheld both the authority of OCR to investigate and take appropriate action under Title VI with respect to faculty hiring and assignments where an impact on students is shown and the authority of the Board to collect racial and ethnic data concerning teachers. The district court and one judge of the court of appeals (joined in the judgment by the other two panel members) upheld the Memorandum of Understanding as a reasonable remedial measure voluntarily undertaken by the Board to eliminate what it reasonably perceived as discriminatory practices without infringing the

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[6] The court of appeals, with Judge Oakes speaking for the entire panel, also affirmed the district court's dismissal of a challenge by petitioner Caulfield to the Memorandum's provision regarding identification of the relevant labor pool and hiring in accordance with it (Pet. App. 14a-15a). Since it is impossible to determine what action, if any, the Board will take with respect to hiring until the labor pool is identified, the court found Caulfield's claimed injury to be purely conjectural (Pet. App. 15a).

Petitioners do not take issue here with the court of appeals' finding that no applicant for employment has alleged injury resulting from the Memorandum's hiring provisions.

rights of any teachers currently in its employ. Contrary to petitioners' contentions, these decisions do not conflict with holdings of this Court, and there are, accordingly, no issues warranting further review.

1. The court of appeals twice rejected petitioners' contention that OCR lacked jurisdiction to enter into an agreement with the Board regarding its faculty hiring and assignment practices because Title VI prohibits employment discrimination only where the primary objective of federal financial assistance is to provide employment (Pet. App. 9a-10a, 23a-24a). See Section 604 of Title VI, 42 U.S.C. 2000d-3. Because most of the federal funds received by the Board are not for the primary purpose of providing employment, petitioners assert that Title VI has no application to the Board's hiring and assignment of teachers.

The court of appeals correctly recognized that in relying on Section 604, petitioners have mischaracterized the nature of OCR's investigation (Pet. App. 23a). On the basis of OCR's charging letter of November 9, 1976, it was apparent to the court of appeals that OCR's concern with discriminatory employment practices "was motivated by the unfortunate effect that these practices exercise on minority schoolchildren" (*id.* at 23a-24a). Since the purpose of the investigation was to alleviate discrimination against minority students and not discrimination against minority teachers as such, the court of appeals correctly concluded that Section 604 has no relevance here, and OCR's actions were a proper exercise of its authority under Section 601, 42 U.S.C. 2000d (Pet. App. 10a).[7] See *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 882-886

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[7] OCR predicated its charges on 45 C.F.R. 80.3(c)(3) (1979), which provides, in pertinent part:

> Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the

(5th Cir. 1966), aff'd en banc, 380 F. 2d 385 (5th Cir.), cert. denied, 389 U.S. 840 (1967).

The court of appeals' decision is fully consistent with this Court's decisions recognizing that, quite apart from the harm resulting from segregative student assignments, harm is inflicted on students when faculty assignments match the race of faculty members to the race predominating in the student bodies of the schools to which they are assigned. Thus, in *Rogers* v. *Paul*, 382 U.S. 198, 200 (1965), this Court held that allocation of faculty on a racial basis "denies [students] equality of educational opportunity without regard to segregation of pupils." Moreover, in *Columbus Board of Education* v. *Penick*, 443 U.S. 449, 467 (1979), this Court adopted the Sixth Circuit's conclusion that teacher segregation "deprive[s] black students of opportunities for contact with and learning from white teachers, and conversely * * * deprive[s] white students of similar opportunities to meet, know and learn from black teachers."

The district court and court of appeals correctly concluded that OCR's action in this case was based on its responsibility under Title VI to insure that no beneficiaries of a program receiving federal funds are subjected to discrimination. Accordingly, petitioners' contention that OCR lacked authority to enter into the Memorandum of Understanding with the Board is without merit.[8]

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recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, [the prohibition against discriminatory employment practices] shall apply * * * to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

[8] Petitioners erroneously analogize this case to decisions under Title IX in which some courts have held that OCR has no power to prohibit

2. Petitioners contend that it was unconstitutional for the Board to alter its teacher hiring and assignment practices in accordance with the Memorandum of Understanding absent a finding of intentional discrimination, which petitioners contend is required to prove a violation of Title VI (Pet. 31-47). It is immaterial, however, whether petitioners have correctly identified the appropriate standard of liability under Title VI,[9] because the decision in this case does not depend on an answer to that question.

In the first place, wholly apart from OCR's investigation and findings, this Court's decisions fully support the

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sex discrimination in the employment practices of federal fund recipients where the primary purpose of the grant of federal funds is not to provide employment (Pet. 25). But courts have held that Title IX may reach employment practices where a nexus exists between employment discrimination and discrimination against students who are the primary beneficiaries of federal funds. See *Islesboro School Committee* v. *Califano*, 593 F. 2d 424, 430 (1st Cir.), cert. denied, 444 U.S. 972 (1979); *Junior College District of St. Louis* v. *Califano*, 597 F. 2d 119, 121 n.3 (8th Cir.), cert. denied, 444 U.S. 972 (1979); *Seattle University* v. *United States Dep't of Education*, 621 F. 2d 992, 993-994 & n.6 (9th Cir. 1980), cert. granted, No. 80-493 (Dec. 1, 1980).

[9] In *Lau* v. *Nichols*, 414 U.S. 563 (1974), this Court upheld a finding of a Title VI violation under an "effects" standard where Chinese-speaking students in San Francisco public schools were taught only in English, a practice that deprived them of "a meaningful opportunity to participate in the educational program." *Id.* at 568. In *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978), four members of this Court concluded that in the context of the use of an explicit racial classification in a medical school admissions policy, the standard of liability under Title VI is the same as that under the Fourteenth Amendment, 438 U.S. at 325, 327 (opinion of Brennan, White, Marshall & Blackman, JJ.), and Justice Powell concluded that, like the Constitution, Title VI prohibits only those racial classifications for which there is no compelling justification. *Id.* at 287 (opinion of Powell, J.). Finally, in *Board of Education of the City School District of New York* v. *Harris*, *supra*, this Court expressly declined to decide the issue whether proof of discriminatory intent is necessary to make out a violation of Title VI. 444 U.S. at 149. In the absence of a decision overruling *Lau*, that case continues to sustain the use of an "effects" standard for determining liability under Title VI.

Board's power to assign a prescribed ratio of white to minority teachers to each school. In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), this Court contrasted a federal court's limited power to remedy de jure segregation with a school board's broad power to integrate its schools as a matter of educational policy. After noting that the "judicial powers may be exercised only on the basis of a constitutional violation," *Swann* states, in language that controls this case (402 U.S. at 16):

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as a matter of educational policy is within the broad discretionary powers of school authorities * * * .

The *Swann* rationale is equally applicable to faculty assignments, and *Swann* accordingly establishes that any school board can voluntarily adopt an educational policy favoring faculty integration for educational purposes and carry out that policy by assigning prescribed ratios of white and minority teachers to each school.

This Court emphasized the same point again in *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45 (1971):

> We observed in *Swann* * * * that school authorities have wide discretion in formulating school policy, and that as a matter of educational policy school authorities may well conclude that some kind of racial balance in the schools is desirable quite apart from any constitutional requirements.

Nor does it matter that the Board's voluntary adoption of the Memorandum's goals was in response to OCR's investigation and findings. As Justice White observed in a similar context where a claim was made that an explicit use of race as a factor in legislative reapportionment was not the product of reasoned choice but rather was coerced by federal officials, "this otherwise constitutionally permissible plan was [not] rendered unconstitutional merely because New York adopted it to comply with a federal statute." *United Jewish Organizations* v. *Carey*, 430 U.S. 144, 168 n.25 (1977).

Thus, *Swann* fully supports the authority of a school board to adopt a policy of race-conscious, integrative teacher assignments for educational purposes notwithstanding the absence of a finding of intentional discrimination. See *Zaslawsky* v. *Board of Education of Los Angeles*, 610 F. 2d 661, 664 (9th Cir. 1979). In the face of this settled constitutional principle approving voluntary integration plans, petitioners' unsupported assertion that teachers "have a constitutional right to be free from transfer and reassignment solely on the basis of their race" (Pet. 42) must fail.

Moreover, as the district court and one judge of the court of appeals found, the Board's action is also valid as an appropriate means of insuring compliance with Title VI without litigating disputed charges to the bitter end. Title VI expresses a clear preference for voluntary resolution of complaints, *Regents of the University of California* v. *Bakke*, 438 U.S. 265, 364 n.38 (1978) (opinion of Brennan, White, Marshall & Blackmun, JJ.), by prohibiting the federal government from initiating a Title VI enforcement action "until the department or agency concerned * * * has determined that compliance cannot be secured by voluntary means." 42 U.S.C. 2000d-1. In *United Steelworkers of America* v. *Weber*, 443 U.S. 193, 208 n.8 (1979), faced with

Title VII's equally strong preference for voluntary compliance, this Court upheld voluntary race-conscious affirmative action by an employer without judicial findings of discrimination and without requiring that the employer be motivated by a reasonable fear of liability under Title VII.

Petitioners' reliance on *Regents of the University of California* v. *Bakke, supra*, is misplaced. Five members of this Court in *Bakke* expressly recognized that a school board could voluntarily adopt a race-conscious integration plan with fixed ratios, even absent a finding of past intentional discrimination. 438 U.S. at 300 n.39 (opinion of Powell, J.); *id.* at 363 (opinion of Brennan, White, Marshall & Blackmun, JJ.). Four Justices approved voluntary efforts to insure compliance with Title VI through race-conscious remedial action without a predicate of judicial findings of intentional discrimination (*id.* at 364 n.38 (opinion of Brennan, White, Marshall & Blackmun, JJ.)), and Justice Powell approved affirmative race-conscious relief in consent decrees even though consent decrees are not founded on any formal findings of discrimination. *Id.* at 302 n.41 (opinion of Powell, J.). Thus, *Bakke* supports the district court's action here.[10]

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[10] In *Bakke*, the effect of the medical school's special admissions policy was to deny some white persons a scarce benefit enjoyed by others—admission to a medical school—solely on the basis of race. By contrast, the assignment goals in the Memorandum here do not deprive any incumbent teacher, black or white, of an opportunity to teach somewhere in the school system, nor do they affect the right of any prospective teacher to seek employment in the school system. Whatever burdens flow from assignment by race are shared by both blacks and whites, and the goals cast no slur or stigma on any racial group. Given these facts, Judges Mansfeld and Meskill found it unnecessary to reach the merits of petitioners' claims because, in their view, petitioners failed to allege any actual harm resulting from the operation of the Memorandum of Understanding.

The district court recognized that if it decided the merits of OCR's charges, it would undermine the statutory preference for voluntary action. Accordingly, it rejected petitioners' invitation to conduct a trial on the merits of OCR's Title VI charges. Instead the court received evidence for the more limited purpose of ascertaining whether the Board had a reasonable basis for believing that the practices at issue might result in liability. On the basis of a detailed factual inquiry the district court answered that question in the affirmative, and petitioners did not urge, nor did the court of appeals hold, that the district court's findings on this issue were clearly erroneous.[11]

In sum, it is not material to the result in this case whether the Board can be found liable for a Title VI violation only upon a finding of intentional discrimination. Under this Court's holding in *Swann*, the Board may assign faculty to

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[11] The record contradicts petitioners' assertion (Pet. 41) that the district court declined to find that the Board intentionally discriminated racially in its hiring and assignment of teachers. In its Conclusions of Law, filed July 17, 1979, the court found that "the statistical and other trial evidence submitted by the federal defendant established a *prima facie* case of racial discrimination in violation of Title VI and the Fourteenth Amendment * * *" (79-6191 C.A. App. at 27).

The marked concentration of minority teachers at minority schools found here by the district court (486 F. Supp. at 908-909) is highly probative on the issue of intent—particularly since "teacher assignment is so clearly subject to the complete control of school authorities, unfettered by such extrinsic factors as neighborhood residential composition or transportation problems." *Kelley* v. *Guinn*, 456 F. 2d 100, 107 & n.8 (9th Cir. 1972), cert. denied 413 U.S. 919 (1973). The inference of intentional discrimination is not dispelled by the Board's past explanations that this stark racial assignment pattern resulted from the unwillingness of teachers to teach in minority schools or the desirability of placing minority teachers in predominantly minority schools as role models. See, *e.g.*, *Smuck* v. *Hobson*, 408 F. 2d 175, 185 (D.C. Cir. 1969); *Morgan* v. *Kerrigan*, 509 F. 2d 580, 596 (1st Cir. 1974), cert. denied, 421 U.S. 963 (1975); *United States* v. *School District of Omaha*, 521 F. 2d 530, 538-539 n.14 (8th Cir.), cert. denied, 423 U.S. 946 (1975).

achieve a prescribed degree of racial balance for educational purposes whether or not it has violated Title VI. And under the rationale adopted by the district court, the Board, in agreeing to the Memorandum, needed only a reasonable basis for believing it might be liable for Title VI violations under either an intent standard or an effect standard. 486 F. Supp. at 876-878. Accordingly, the question of which standard applies in a fully litigated case is purely hypothetical and not amenable to review by the Court in this case.

3. As the court of appeals found (Pet. App. 10a, 24a-25a), petitioners' constitutional objection to the collection of racial and ethnic data is wholly without merit. None of the cases cited by petitioner (Pet. 49-50) suggests that such a census is an intrusion into intimate private matters, and the collection of this information is fully consistent with the purpose of laws designed to enforce constitutional guarantees of equal educational opportunity. See *United States* v. *State of New Hampshire*, 539 F. 2d 277, 280-282 (1st Cir.), cert. denied, 429 U.S. 1023 (1976). That issue does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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